STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE: 542-5025
TELECOPIER: 542-4085

December 31, 1991

Candyce B. Pardee
Deputy County Attorney
Gila County Attorney
1400 E. Ash Street
Globe, Arizona 85501

RE: I91-035 (R91-043)

Dear Ms. Pardee:

Pursuant to A.R.S. § 15-253(B), we have reviewed your October 1, 1991 opinion letter to Frank Ellena, Superintendent of Young Public School District, regarding (1) whether district personnel may conduct random searches of students' persons, lockers, cars, desks, and personal effects while on campus, and (2) whether a student may be suspended until a parent accompanies the student through an entire school day.

We concur with your conclusion that district personnel may not conduct random searches of students' persons or their personal effects, but may conduct searches only if they have a reasonable suspicion that contraband will be found on the students' persons or in their personal effects.

We revise your response to the second question by noting that the school district lacks authority to compel parents to attend classes.

Regarding your first question, the United States Supreme Court has held that the "Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials." New Jersey v. T.L.O., 469 U.S. 325, 333 (1985). Searches by public school officials are constitutionally permissible if they are reasonable under the circumstances. Id. at 341. A search by a school official is reasonable if it is (1) justified at its inception, and (2) "reasonably related in scope to the circumstances which justify the interference in the first place." Id. A search will be "'justified at its inception' when there are reasonable grounds for

suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." Id. at 342. The scope of the search will be reasonable if "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." Id.

The Arizona Court of Appeals has interpreted the guidelines set forth in T.L.O. to require that a principal who conducts a student search have "personal knowledge regarding the minor's conduct" or know of "specific reports which would give rise to a reasonable suspicion" that illegal activity has taken place. In the Matter of Pima County Juvenile Action No. 80484-1, 152 Ariz. 431, 432, 733 P.2d 316, 317 (App. 1987). Awareness of drug use at the school, mention of a minor's name in connection with drug activity, and a minor's mere presence in an area where illegal activities may take place are not sufficient to satisfy the reasonableness standard. Id.

Although we concur with your general conclusion that school officials may search students and their personal effects according to the reasonableness standard set forth in T.L.O., we revise your opinion to note that whether "reasonableness" is sufficient to allow searches of lockers, desks, or other school-owned property has not been resolved by the United States Supreme Court. The Supreme Court expressly declined to consider what standard should be used for searches of lockers or desks. T.L.O., 469 U.S. at 337 n. 5. Courts that have considered this issue are split whether such searches may be conducted under a "reasonableness" standard. Compare Zamora v. Pomeroy, 639 F.2d 662, 670 (10th Cir. 1981); and In the Interest of S.C. v. State, 583 So. 2d 188, 191 (Miss. 1991)(applying the reasonableness test); with State v. Engerud, 94 N.J. 331, 463 A.2d 934, 941-42 (1983)(articulating a "reasonableness" standard, but appearing to apply the probable cause test). However, one cannot have a protected interest in a particular place or item unless he or she has a legitimate expectation of privacy in that place or item. T.L.O., 469 U.S. at 338; Hudson v. Palmer, 468 U.S. 517, 526 (1984). Adopting the policies you have proposed in your letter, for example, informing students that school administrators can and will search lockers and desks at any time, may reduce the students' expectations of privacy in lockers and desks and consequently may make searches of these areas "reasonable" under the standard set forth in T.L.O. See 469 U.S. at 338-40.

We further revise your opinion to exclude searches of students' motor vehicles. The school district does not own the students' motor vehicles, and the students consequently would have a legitimate expectation of privacy in them. See Cardwell v. Lewis, 417 U.S. 583, 591 (1974) (plurality opinion). Moreover, a school's interest in maintaining an environment conducive to learning, an interest that the

United States Supreme Court recognizes as outweighing a student's expectation of privacy in his personal effects, is attenuated in a vehicle in the school parking lot. See T.L.O., 469 U.S. at 338-40. Therefore, searches of students' motor vehicles should not be conducted under the lenient "reasonableness" standard, but under the more stringent "probable cause" standard. Carroll v. United States, 267 U.S. 132, 153 (1925); California v. Acevedo, 501 U.S. ___, ___, 111 S. Ct. 1982, 1986 (1991).

We revise your opinion regarding suspensions. Suspension and expulsion procedures are prescribed under Article 3, A.R.S. § 15-840 et seq. A notice and hearing procedure is required when a student is to be suspended for more than ten days. A.R.S. § 15-843(B)(5). When a suspension is for ten days or less, due process protections require "some kind" of notice and hearing. Goss v. Lopez, 419 U.S. 565 (1975). Although the notice need not be formal and the hearing might be no more than an immediate discussion of the alleged misconduct with the student, some due process proceeding must be provided. Id. at 582.

With respect to whether the school district may require a parent to accompany a suspended student through a school day before the student will be allowed to attend classes on his or her own, we note that school districts have no authority to compel parental attendance. The powers and duties of school boards set forth in A.R.S. § 15-341 et seq. do not provide any express authority over parents. Absent such an express grant of authority, the district lacks power to compel parental attendance. See Tucson Sch. Dist. v. Tucson Educ. Ass'n, 155 Ariz. 441, 443, 747 P.2d 602, 602-03 (App. 1988). Although the statutes permit parents, for instance, to appeal teachers' decisions to promote or retain a child, 1/ it does not follow that the districts possess implied authority over parents. Nor is the compulsory school attendance requirement that the parent or guardian of a child send the child to school, see A.R.S. § 15-802, sufficient to compel parental attendance at school. The only statutory authority over parents is to compel parental liability for the vandalism of their children. A.R.S. § 15-842. But the resultant liability is not compulsion to appear, but rather the obligation to pay damages. In an earlier Attorney General Opinion, we noted that if the parent or guardian actively contributes to or condones the child's absences or delinquencies, the parent or guardian might be prosecuted. See Ariz. Att'y Gen. Op. I78-242. Prosecution, not compulsory school attendance, is the school district's recourse against parents. Although school officials may request that parents accompany a child to school, they can neither require such attendance nor make it a prerequisite to student re-admission.

---

1. A.R.S. § 15-341(A)(17).

We conclude that school districts must follow appropriate notice and hearing requirements before a student can be suspended, and that parental attendance may be requested but not required.

Sincerely

Grant Woods
Attorney General

FWS:RWB:pcd:mak
6501w